UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

JEFFREY SORENSEN, an individual, Plaintiff, vs. WD-40 COMPANY, a Delaware corporation, Defendant.	Civil Action No. 3:12-cv-50417 District Judge Frederick J. Kapala Magistrate Judge Iain D. Johnston

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF WD-40 COMPANY'S MOTION FOR SUMMARY JUDGMENT

(FILED UNDER SEAL)

Pursuant to Federal Rule of Civil Procedure 56, Defendant WD-40 Company ("WD-40"), by and through its undersigned attorneys, submits the following Motion for Summary Judgment as to all claims for relief asserted by Plaintiff Jeffrey Sorensen ("Sorensen").

I. INTRODUCTION

This Court should enter summary judgment in favor of WD-40 with respect to each and every claim asserted by Sorensen as no genuine issue of material fact exists. WD-40 did not commit infringement, false designation of origin, or unfair competition because it is a legal impossibility. Sorensen cannot establish that he has valid trademark registrations for "THE INHIBITOR," a crosshair design, or "THE INHIBITOR" design. Regardless of whether Sorensen's marks are valid, WD-40 does not use the word inhibitor as a trademark. WD-40 will clearly demonstrate that its use of the word inhibitor, as an element of the descriptive phrase "Long-Term Corrosion Inhibitor" explaining one product's functionality, is fair use precluding liability for trademark infringement. The crosshair used by WD-40 on the WD-40 Specialist products is registered as a U.S. trademark. As the registered owner of the crosshair mark, WD-40 is entitled to use the crosshair as a trademark. Importantly, Sorensen has failed to demonstrate that there exists a likelihood of confusion between the WD-40 Specialist products and Sorensen's products. Accordingly, WD-40 is entitled to judgment as a matter of law as to all of Sorensen's claims.

II. FACTUAL STATEMENT

A. The Trademarks And Products At Issue

Sorensen alleges that WD-40's Specialist products infringe his Reg. No. 2,604,283 of "THE INHIBITOR" word mark. Sorensen also alleges that WD-40 has infringed his common law rights in a crosshair design and "THE INHIBITOR" design (collectively "SORENSEN DESIGNS"). Statement of Undisputed Facts ("SUF") ¶3. Sorensen does not have a state or federal trademark registration for either of the SORENSEN DESIGNS, nor has he ever filed registration applications. SUF ¶¶11, 12. "THE INHIBITOR" is registered in International Class 1, affording trademark protection only to goods that are "**capsules** containing corrosion inhibiting chemicals for use in connection with metallic objects." SUF ¶¶7, 8. Sorensen does not sell capsules, but sells VCI cardboard chips, soaks, lubricants, greases, cloths, paper, sleeves, gun plugs and one aerosol product. SUF ¶14. Sorensen uses several iterations of "THE INHIBITOR" and the SORENSEN DESIGNS on his products: (SUF ¶¶15, 20).

The accused WD-40 Specialist products are all aerosol or liquid, not capsules or greases, and target rust prevention, removal and protection, and lubrication and waterproofing. SUF ¶22. WD-40 sells eight WD-40 Specialist products, as shown here:

WD-40
RUST
REMOVER
SOAK

To sub-brand the Specialist product line, WD-40 applied for and was granted federal trademark protection with respect to a variety of "WD-40 Specialist" word and design marks. Examples of the WD-40 Specialist design marks include:

SUF ¶24. WD-40 did not seek trademark protection regarding its "Long-Term Corrosion Inhibitor," or any other Specialist branded product name, as such phrases are functional descriptors. SUF ¶¶17, 18. WD-40 owns registration number 4,203,718, the crosshair design depicted above, for goods registered in international classes 2,3, and 4. SUF ¶6.

Only one WD-40 Specialist product, the Long-Term Corrosion Inhibitor, contains Volatile Corrosion Inhibitor ("VCI") technology, which has been in existence since approximately the 1940s. VCI products, commonly called "corrosion inhibitors," constitute an entire class or category of products, sold by multiple third parties, including market leaders CRC Industries, Inc. and Liquid Wrench, as revealed by a Google Internet search for "corrosion inhibitor." SUF ¶13.

Sorensen's products bear the words "THE INHIBITOR" in a black or gray color, in capital letters and an industrial-looking font, interchangeably containing a crosshair design or a bulls-eye in the "O" of "INHIBITOR," and in varying placements on the front, back and sides of each product and product packaging. SUF ¶¶15, 20.

Conversely, "Long-Term Corrosion Inhibitor" is consistently placed beneath the "WD-40" brand and the "Specialist" sub-brand. SUF ¶¶16, 24, 70. The font is rounded, the color is white, and the appearance of the words never changes. SUF ¶16.

[redacted]

B. Famousness of WD-40 Brand

"WD-40" is an iconic American brand that is sold throughout the United States and in 187 countries worldwide. SUF ¶2. Over the last sixty years, WD-40 has invested a great deal of time and money promoting its flagship WD-40 Multi-Use Product, gaining global notoriety for its trademarks. SUF ¶2. WD-40 is a household name and market leader among multi-purpose maintenance products. SUF ¶¶2, 56. In the United States alone, four out of five adult American consumers have used WD-40 products. SUF ¶2, 56, 57. WD-40 sold its hallmark "WD-40 Multi-

Use Product" in the blue and yellow can for forty years before leveraging fame of its brand to expand the new WD-40 Specialist product line, building a fortress of homecare and cleaning product brands along the way. SUF ¶¶2, 70. The WD-40 mark is the primary mark visible on the WD-40 Specialist products, prominently displayed across the top of each can. SUF ¶23. The famous WD-40 trademarks ensure the delivery of unique, highly valuable, and reliable products to consumers. SUF ¶¶23, 2, 57.

[redacted]

C. Unique Channels Of Trade

Sorensen and WD-40 advertise, market and sell their respective products in different channels of trade. SUF ¶¶ 31, 32, 41, 45-48. [redacted]

D. No Evidence of Confusion Presented

Fact discovery has closed and Sorensen has not presented any evidence of actual or likely confusion. SUF ¶62. [redacted] No person has ever inquired, orally or in writing, whether Sorensen's products or services are connected in any way with WD-40, or with WD-40's products or services, or vice versa. SUF ¶62. No communications exist in which a consumer, or any other entity, expressed confusion between the Sorensen and WD-40 Specialist products. SUF ¶62.

E. WD-40 Specialist Brand Development

Prior to service of the Complaint, WD-40 had no knowledge of Sorensen, Van Patten Industries, Inhibitor Technology Corporation, or Sorensen's intellectual property or products. SUF ¶75. [redacted]

WD-40 utilizes "Long-Term Corrosion Inhibitor" as the functional descriptive phrase of one of its WD-40 Specialist branded products based on research and end-user feedback. SUF ¶68. [redacted] WD-40 has always maintained extensive protocols and policies with regard to the implementation of its intellectual property to protect its intellectual property. SUF ¶71.

III. ANALYSIS

A. Legal Standard

Summary judgment is appropriate if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P.56(c). "Factual disputes are genuine only if the evidence is such that a reasonable jury could return a verdict for the non-movant, and are material only when they might affect the outcome of the suit under the governing law." *Packman v. Chicago Tribune Company*, 267 F.3d 628, 637 (internal citations omitted). To obtain summary judgment, "a movant need only point to those portions of the record which demonstrate an absence of a genuine issue of material fact given the relevant substantive law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). "[T]he question of whether likelihood of confusion exists may be resolved on summary judgment if the evidence is so one-sided that there can be no doubt about how the question should be answered." *Door Sys., Inc. v. Pro-Line Door Sys., Inc*. 83 F.3d 169, 171, 173 (7th Cir. 1996). "To succeed on a trademark infringement claim, the Plaintiff must establish that its mark is protectable and defendants' unauthorized use of the mark was likely to cause confusion among consumers." *Packman*, 267 F.3d at 638, n.8. Courts in this district recognize that "consumer confusion does not exist within the scope of an infringement claim when the mark is not entitled to trademark protection." *Platinum Home Mortg.Corp. v. Platinum Financial Group, Inc*., 149 F.3d 722 (7th Cir. 1998). Here, the evidence is so one-sided as to leave no doubt that a reasonable fact finder could only conclude no genuine issue of material fact exists as to any of Sorensen's claims, and this matter should be resolved on summary judgment.

B. This Court Must Dismiss Sorensen's Claims for Relief for Trademark Infringement, False Designation of Origin And Unfair Competition For Three Specific Reasons

1. Sorensen's Marks Are Unprotectable

"[A] court does not even reach the question of likelihood of confusion until persuaded that the putative mark is sufficiently distinctive to warrant prima facie protection as a trademark." *Blau Plumbing, Inc. v. S.O.S. Fix-It, Inc*., 781 F.2d 604, 610 (7th Cir.1986). The focal point of a trademark validity analysis is the determination "whether that mark specifically identifies and distinguishes one company's goods and services from those of its competitors." *Platinum Home*, 149 F.3d at 726. The burden of proving the validity of an unregistered mark lies with the alleged owner, pursuant to §43(a) of the Lanham Act. *Curtis v. Thompson*, 840 F.2d 1291, 1296 (7th Cir. 1988).

Mr. Sorensen's mark and designs do not warrant federal or common law trademark protection. "THE INHIBITOR" mark is merely descriptive, and Sorensen uses the SORENSEN DESIGNS inconsistently, diluting any ownership value they once had, rendering them both unprotectable as trademarks under the common law. SUF ¶¶10, 20.

2. WD-40's Use Of The Word Inhibitor Constitutes Fair Use

"To prevail on the fair use defense, [WD-40] must show that (1) they used [inhibitor] in a non-trademark use; (2) [inhibitor] is descriptive of its goods and services; and (3) [WD-40] used [inhibitor] fairly only to describe [WD-40's Specialist Long-Term Corrosion Inhibitor]." *Packman,* 267 F.3d at 639.

First, WD-40 uses "inhibitor" as a functional description of a WD-40 Specialist product. SUF ¶69. [redacted] Since "inhibitor" describes a function, quality or characteristic of a product, Sorensen cannot "appropriate the [word inhibitor] to himself, thereby preventing others from using the word in a descriptive sense." *Packman,* 267 F.3d at 641. The record lacks any evidence, i.e. consumer surveys or consumer testimony, that "THE INHIBITOR" is inherently distinctive or that it has acquired secondary meaning. Accordingly, the record supports only one conclusion, that "[inhibitor] is merely a descriptive phrase without a secondary meaning, a phrase which [WD-40], or any other person, may rightfully use." *Id*. at 642.

Third, "[m]ere knowledge of [Sorensen's] trademark on ["THE INHIBITOR"] is insufficient to establish that [WD-40] acted in bad faith and to preclude summary judgment. [WD-40's] good faith can be judged only by inquiry into [its] subjective purpose in using the [word]." *Ibid*. (citations and quotations omitted). WD-40 uses "WD-40" and "Specialist" marks as the source identifiers at the top of each can of the accused products, confirming WD-40 has not acted in bad faith or with the intent to confuse the public about the source of the "WD-40 Specialist Long-Term Corrosion Inhibitor." SUF ¶¶23, 24. Sorensen has failed to adduce evidence creating a genuine issue of fact as to any of the three elements of the fair use doctrine. Accordingly, it is undisputed that WD-40's use of the word "inhibitor" is a good faith non-trademark use to describe a characteristic or quality of the "WD-40 Specialist Long-Term Corrosion Inhibitor."

3. No Likelihood Of Confusion Exists Between Sorensen's Marks and WD-40's Specialist Products

"The keystone of trademark infringement is "likelihood of confusion" as to source, affiliation, connection or sponsorship of goods or services among the relevant class of customers and potential customers." *Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 957 (7th Cir. 1992). "[L]ikelihood of confusion must be determined with reference to the realities of consumer behavior in the relevant market." *Rust Env't & Infrastructure Inc. v. Teunissen*, 131 F.3d 1210, 1216 (7th Cir.1997). A Plaintiff must prove that a likelihood of confusion exists among "a significant number of consumers and not merely in an isolated situation." *SparkNet Communications, L.P. v. Bonneville Int'l Corp.*, 386 F.Supp.965, 974 (N.D.Ill. 2005); *See also Libman Co. v. Vining Indus., Inc.*, 69 F.3d 1360, 1364 (7th Cir. 1995) (no trademark infringement where no evidence of a "significant fraction" of the relevant market was misled).

The Seventh Circuit employs the following seven-factor analysis to determine whether a likelihood of confusion exists for purposes of trademark infringement: "(1) similarity between the marks in appearance and suggestion; (2) similarity of the products; (3) area and manner of concurrent use; (4) degree of care likely to be exercised by consumers; (5) strength of the plaintiff's mark; (6) actual confusion; and (7) intent of the defendant to 'palm off' his product as that of another." *Packman*, 267 F.3d at 643. None of these factors is dispositive. *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 897 (7th Cir.2001). "[T]he weight and totality of the most important factors in each case will ultimately be determinative of the likelihood of confusion, not whether the majority of factors tilt the scale in favor of one side or the other." *Schwinn Bicycle Co. v. Ross Bicycles, Inc.*, 870 F.2d 1176, 1187 (7th Cir. 1989). Under this paradigm it is clear that, as a matter of law, no likelihood of confusion exists in this case.

(a) Lack of Similarity and Appearance

Courts analyze the degree of similarity between the marks and consider the sight, sound, and meaning of the marks as a whole. *Meridian Mut.Ins. Co. v. Meridian Ins. Group, Inc.*, 128 F.3d 1111, 1115 (7th Cir. 1997). In determining whether marks are similar, comparison should be made "in light of what happens in the marketplace and not merely by looking at the two marks side-by-side." *Ty, Inc.*, 237 F.3d at 898-99. Side by side, Sorensen's V80 aerosol product is visually disparate from that of the WD-40 Specialist products, the products are strikingly different:

Plaintiff's product ***Defendant's product***

The hallmark WD-40 shield is the primary mark atop each accused product, coupled with the Specialist sub-brand, and each product bears a descriptive phrase regarding its function. SUF ¶¶16,23. For one product, WD-40 uses the word "inhibitor" as a component of the descriptive phrase "Long-Term Corrosion Inhibitor." SUF v¶16-18. This descriptive phrase is always used in conjunction with the "Specialist" trademarks. SUF ¶16. By comparison, the words "THE INHIBITOR" are intended by Sorensen to be used in the trademark sense, as a source identifier, and the brand of his products. SUF ¶14. Sorensen uses multiple placements for the words "THE INHIBITOR" on his products and packaging. SUF ¶20. In Sorensen's use of the words "THE INHIBITOR" the color of the letters is always black or gray. SUF ¶15. The word "Inhibitor" in WD-40's descriptive phrase is always white in color. SUF ¶16. Sorensen's "THE INHIBITOR" font is industrial-looking, with bold, hard edges while the font in WD-40 Specialist "Long-Term Corrosion Inhibitor" is rounded and in smaller type size. SUF ¶15. The WD-40 Specialist

"Long-Term Corrosion Inhibitor" is diminutive in comparison to Sorensen's "THE INHIBITOR."

The WD-40 registered crosshair design mark is consistently in the lower portion of each WD-40 Specialist product can. SUF ¶16. Each WD-40 Specialist product contains a crosshair design mark with a distinctive background color and unique images within each quadrant of the design. SUF ¶21. In contrast, Sorensen uses a "bulls-eye" resembling a target interchangeably with a crosshair design, alone and within Sorensen's "THE INHIBITOR" design. SUF ¶20. Sorensen also primarily uses orange, yellow, black and white as his banner colors. SUF ¶15. Comparatively, the black and silver color scheme, yellow cap and iconic yellow shield are defining elements of each WD-40 Specialist product. SUF ¶16. There is no similarity in the manner in which each party uses colors and the parties' products are visually disparate.

The sound of each product name is also distinctive. The WD-40 product at issue is "WD-40 Specialist," whereas Sorensen's products are intended to be "THE INHIBITOR." SUF ¶14. Thus, when a person hears the two names, they can easily distinguish between the products.

Finally, courts consider the relative meaning of the marks. [redacted] Overall, a comparison of the factors assessing the degree of similarity between the marks clearly establishes that the marks are quite dissimilar. They do not look, sound or mean the same thing, and thus this factor weighs against a finding of likelihood of confusion.

(b) Products At Issue Do Not Derive From The Same Source

"When considering whether products are closely related for the purpose of likelihood of confusion, a closely related product is one which would reasonably be thought by the buying public to come from the same source, or thought to be affiliated with, connected with, or sponsored by, the trademark owner." *Ty, Inc.*, 237 F.3d at 899. "[W]here the brand name is prominently stressed in the label, there is not likely to be any confusion as to source, which is the essence of trademark infringement." *Ye Olde Tavern Cheese Prods, Inc. v. Planters Peanuts Div., Standard Brands Inc.*, 261 F. Supp.200, 206 (N.D.Ill. 1966).

Sorensen sells VCI products as cardboard chips, soaks, lubricants, greases, cloths, paper, sleeves, gun plugs and an aerosol. SUF ¶14. Seven of the eight WD-40 Specialist products bearing WD-40's registered crosshair design are only sold as aerosol products. SUF ¶26. These products would never be perceived by the public as coming from the "same source, or thought to be affiliated with, connected with, or sponsored by, the trademark owner" because the source identifier of Sorensen's products is "THE INHIBITOR." SUF ¶14. The source identifier of the WD-40 Specialist products is "WD-40." SUF ¶23. Moreover, Sorensen's products are predominantly orange, and WD-40 Specialist products are black, silver and yellow. SUF ¶¶15-16. Accordingly, this factor weighs against finding a likelihood of confusion.

(c) Area and Manner of Use Of WD-40 Specialist Products Is Distinctive

The following factors are applied to determine whether the area and manner of concurrent use between two marks is likely to cause confusion: (1) the relative geographical distribution area; (2) evidence of direct competition; (3) whether the products are sold in the same type of store; (4) whether the products are sold in a similar section of a particular store; and (5) whether the products are sold through the same marketing channels. *Ty, Inc.*, 237 F.3d at 900 (citations omitted). Sorensen brought forth no evidence to show his distribution channels overlap with WD-40, or that he advertises his products in the same media channels as WD-40. This weighs against a finding of a likelihood of confusion. *Packman*, 267 F.3d at 646. Indeed, Sorensen and WD-40 advertise, market and sell their products in distinct channels of trade. [redacted]

[redacted] Accordingly, this factor weighs against finding a likelihood of confusion.

(d) Degree And Care Exercised By Consumers Will Focus On The WD-40 Brand

The prominence of a well-known or famous brand mitigates against the possibility of any likelihood of confusion with another product, and consumers take greater care in searching for and purchasing a famous product to ensure that they have identified that product. *Telemed Corp. v. Tel-Med, Inc*., 588 F.2d 213, 219-20 (7th Cir. 1978) (citation omitted). In *Polaroid Corp.* the Seventh Circuit recognized that a trademark or trade name that is a coined or invented word that has never been used as a trade name or a trademark by any other entity acquires the status of a famous-brand trademark. *Polaroid Corp. v. Polaroid Inc*., 319 F.2d 830, 831 (7th Cir.1963).

WD-40 is a famous mark. SUF ¶56. WD-40 hired a market research expert, Mr. Phil Johnson of Leo J. Shapiro & Associates to conduct a consumer survey as to the degree of famousness of WD-40. SUF ¶57. Mr. Johnson found that "spontaneous awareness of WD-40 stands at 70%, an extremely high level in my experience, while aided awareness is almost universal at 94%. Further, the vast majority of the population (85%) report having used WD-40 in the past." SUF ¶57. Based on his survey research, Mr. Johnson concluded:

> "The levels of awareness, experience with, and intention to purchase that are found for the WD-40 brand are well above the levels that can be described as a simple majority of the population. Instead, WD-40 is a brand that is known to almost the entire population of the United States. Further, WD-40 is a product that has already been used in the past by most adults who also intend to use it in the future. Based on this empirical data, it is my opinion that WD-40 is certainly a famous brand." SUF ¶57.

Consumers looking for a WD-40 product exercise greater care than other consumers, because they want to find WD-40. [redacted]

[redacted] Accordingly, this factor weighs against finding a likelihood of confusion.

(e) Weakness Of Sorensen's Mark Negates Confusion

Sorensen's "THE INHIBITOR" mark is descriptive of a product's function, and therefore relatively weak. The following factors are relevant to determine if a mark is descriptive: (1) what degree of imagination, if any, must consumers use to ascertain a quality or characteristic of the product from the viewing the mark that product bears; (2) whether others sellers of the good/service want/need to use the term in connection with the sale of their products; (3) whether other sellers use the term to describe their products; (4) whether the mark conjures up an arbitrary image in the mind of each consumer viewing it; and (5) whether consumers will consider the mark a symbol of origin. 1 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* §§ 11.21, 11.22 (3d ed. 1992).

Employing these factors confirms "THE INHIBITOR" mark is descriptive. First, products bearing the words "THE INHIBITOR" and the SORENSEN DESIGNS do not require that a consumer use imagination to comprehend the product's function. "Inhibitor" is defined in the English language as "a substance that retards or stops a chemical reaction." SUF ¶10. Second, the words "inhibit" and "inhibitor" are needed by other manufacturers of VCI products to describe their products' functionality. SUF ¶10. Importantly, courts in this district recognize that "trademark protection should not interfere with the traditional policies of a competitive market." *Platinum Home*,149 F.3d at 726, citing *August Storck K.G. v. Nabisco, Inc.*, 59 F.3d 616, 619 (7th Cir. 1995). Multiple trademark owners need the crosshair design as an integral element of their federal registrations in international classes 1, 2, 3, and 4. SUF ¶11. Third, other manufacturers of VCI products use the word "inhibitor" to describe their products since these products contain Volatile Corrosion Inhibitor technology. Fourth, "THE INHIBITOR" mark and SORENSEN DESIGNS are not arbitrary, as they require no sense of imagination and are descriptive. Sorensen has testified to the same. SUF ¶10. Fifth and finally, Sorensen has produced no evidence as to whether consumers would consider any of his marks as symbols of origin. Thus, this factor weighs against a finding of confusion.

(f) No Evidence Of Actual Confusion

"[A] finding of likely confusion can no more be based on pure conjecture or a far fetching narrative alone than any other finding on an issue on which the proponent bears the burden of proof." *Libman Co. v. Vining Indus., Inc.*, 69 F.3d 1360, 1363 (7th Cir. 1995).

No legitimate evidence of actual consumer confusion exists in this case. SUF ¶62. [redacted] Sorensen has designated no expert in this matter, nor has he produced any survey evidence. SUF ¶30. As Sorensen has no evidence of actual confusion, this critical factor weighs heavily against a finding of a likelihood of confusion.

(g) No Intent To Copy Sorensen's Marks Or Palm Off Products

"A trademark…is merely an identifier of source. Others can use the same mark to identify their product, provided there is no likelihood of confusion…which would impair the trademark's function as an identifier." *Door Sys., Inc.*, 83 F.3d at 173 (citation omitted). "The use of a similar name by another to truthfully describe his own product does not constitute a legal or moral wrong, even if its effect be to cause the public to mistake the origin of the product." *Sunmark, Inc. v. Ocean Spray Cranberries, Inc.*, 64 F.3d 1055, 1059 (7th Cir. 1995) (citation and quotation omitted).

There is no evidence of intent to copy by WD-40. SUF ¶76. [redacted]

WD-40 has become a global corporation selling numerous products in 187 countries due in large part to wise business planning and decision-making. SUF ¶2. WD-40 undertook an exhaustive process to develop, market and launch its new WD-40 Specialist product line. WD-40 created global brand protection guidelines to ensure consistent use of the "WD-40 Specialist" brand worldwide. SUF ¶¶63, 71. WD-40 has not laid claim to the exclusive use of the word "inhibitor." Nor does WD-40 use the word "inhibitor" or the crosshair design as a source identifier. SUF ¶23. WD-40 wants to foster the instinctual consumer response that the well-known yellow shield represents a WD-40 product. SUF ¶¶56, 57. Accordingly, no evidence indicating an intent to copy exists, and this factor weighs against a finding of confusion.

C. Sorensen's Remaining Claims Must Be Dismissed

Sorensen's remaining claims are premised on allegations of infringement by WD-40. Since Sorensen has failed to demonstrate the existence of any genuine issue of material fact as to his claims of infringement, Sorensen's remaining claims of common law trademark infringement, unfair competition, and deceptive trade practices under Illinois state law must be dismissed.

IV. CONCLUSION

For the foregoing reasons WD-40 requests that the Court enter summary judgment in its favor with respect to all of Jeffrey Sorensen's Claims.

DATED: December 23, 2013

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CERTIFICATE OF SERVICE

The undersigned counsel certifies that on December 23, 2013, the foregoing **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF WD-40 COMPANY'S MOTION FOR SUMMARY JUDGMENT (FILED UNDER SEAL)** was served by email and Federal Express upon counsel for the Plaintiff, Jeffrey Sorensen, and by Federal Express to the Court (in a manner consistent with L.R. 26.2 and 5.8), and served this restricted document by using the Court's EM/ECF Electronic Filing system, which will serve the following attorneys of record:

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